

ASSEMBLY BILL

No. 938

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Sections 309, 315, 317, 319, and 366.21 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as introduced, Committee on Judiciary. Dependent children: relative caregivers and foster parents.

(1) Existing law authorizes a social worker to take a child who is at risk of abuse or neglect into temporary custody under specified circumstances. Existing law requires the social worker to investigate the circumstances of the child and the facts surrounding the taking of the child into custody. Existing law requires that the social worker immediately release the child to the custody of the child's parent or guardian, or other responsible relative, except under certain conditions. If the child is not released to the custody of his or her parent or guardian, the child is deemed to be detained, and a detention hearing must be conducted before the expiration of the next judicial day after a petition to declare the minor a dependent child of the juvenile court has been filed.

Existing law provides for an initial petition hearing to determine, among other things, whether a child shall remain in detention, and, with respect to a child who is adjudged a dependent child of the juvenile court and placed in foster care, for periodic status review hearings to review, among other things, the continuing necessity for and appropriateness of the placement. Prior to a status review hearing

regarding a child who is in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services or by a licensed county adoption agency, as specified, the foster parent, relative caregiver, or certified foster parent may file with the court a report containing his or her recommendation for disposition.

This bill would require a social worker, when a child is detained, to immediately conduct an investigation, as specified, in order to identify and locate all grandparents and other adult relatives of the child, in order to provide, except in cases of domestic violence, those persons with specified information, including that the child has been removed from the home and an explanation of various options to participate in the care and placement of the child, as specified, and to report to the court at the initial petition hearing regarding that effort. The bill would require the court to inquire, at the detention hearing, and at the initial petition hearing, regarding those efforts.

The bill would also require the Judicial Council to develop prior to January 1, 2011, a relative information form, as specified. The form would provide information regarding the needs of the child, and would include a provision whereby the relative may request the permission of the court to address the court. The bill would require a social worker to provide that form at the initial petition hearing, on and after January 1, 2011, to the adult relatives identified pursuant to the provision described above.

The bill would require, at the initial petition hearing and at the status review hearing, the court to consider and to determine whether, in the court's discretion, to grant the request of a relative, or of a foster parent on the report described above, to address the court. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law authorizes the juvenile court to appoint counsel to represent a parent or guardian in dependency proceedings if that parent or guardian cannot afford counsel.

The bill would also express the intent of the Legislature that all parties to a juvenile court hearing have a meaningful opportunity to participate in the hearings and, at a minimum, have the opportunity to review reports and meet with their attorneys before the detention hearing.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 309 of the Welfare and Institutions Code
2 is amended to read:

3 309. (a) Upon delivery to the social worker of a child who has
4 been taken into temporary custody under this article, the social
5 worker shall immediately investigate the circumstances of the child
6 and the facts surrounding the child's being taken into custody and
7 attempt to maintain the child with the child's family through the
8 provision of services. The social worker shall immediately release
9 the child to the custody of the child's parent, guardian, or
10 responsible relative unless one or more of the following conditions
11 exist:

12 (1) The child has no parent, guardian, or responsible relative;
13 or the child's parent, guardian, or responsible relative is not willing
14 to provide care for the child.

15 (2) Continued detention of the child is a matter of immediate
16 and urgent necessity for the protection of the child and there are
17 no reasonable means by which the child can be protected in his or
18 her home or the home of a responsible relative.

19 (3) There is substantial evidence that a parent, guardian, or
20 custodian of the child is likely to flee the jurisdiction of the court.

21 (4) The child has left a placement in which he or she was placed
22 by the juvenile court.

23 (5) The parent or other person having lawful custody of the
24 child voluntarily surrendered physical custody of the child pursuant
25 to Section 1255.7 of the Health and Safety Code and did not
26 reclaim the child within the 14-day period specified in subdivision
27 (e) of that section.

28 (b) In any case in which there is reasonable cause for believing
29 that a child who is under the care of a physician or surgeon or a
30 hospital, clinic, or other medical facility and cannot be immediately
31 moved and is a person described in Section 300, the child shall be

1 deemed to have been taken into temporary custody and delivered
2 to the social worker for the purposes of this chapter while the child
3 is at the office of the physician or surgeon or the medical facility.

4 (c) If the child is not released to his or her parent or guardian,
5 the child shall be deemed detained for purposes of this chapter.

6 (d) (1) *If the child is detained, the social worker shall*
7 *immediately conduct an investigation in order to identify and locate*
8 *all grandparents and other adult relatives of the child. The social*
9 *worker shall notify all adult relatives who have been located,*
10 *except in cases of domestic violence, of the following information:*

11 (A) *The child has been removed from the custody of his or her*
12 *parent or parents, or his or her guardian.*

13 (B) *An explanation of the various options to participate in the*
14 *care and placement of the child, including, the Kin-GAP Program*
15 *(Article 4.5 (commencing with Section 11360) of Chapter 2 of Part*
16 *3 of Division 9) the requirements to become a foster family home,*
17 *and other options for contact with the child.*

18 (2) *On and after January 1, 2011, the social worker shall also*
19 *provide the adult relatives notified pursuant to paragraph (1) with*
20 *a relative information form to provide information to the social*
21 *worker and the court regarding the needs of the child. The form*
22 *shall include a provision whereby the relative may request the*
23 *permission of the court to address the court. The Judicial Council*
24 *shall develop the form before January 1, 2011.*

25 (3) *The social worker shall use due diligence in investigating*
26 *the name and location of the relatives pursuant to paragraph (1),*
27 *including, but not limited to, obtaining information regarding the*
28 *location of the child's adult relatives from the California Parent*
29 *Locator Service.*

30 ~~(d)~~

31 (e) (1) If an able and willing relative, as defined in Section 319,
32 or an able and willing nonrelative extended family member, as
33 defined in Section 362.7, is available and requests temporary
34 placement of the child pending the detention hearing, the county
35 welfare department shall initiate an assessment of the relative's or
36 nonrelative extended family member's suitability, which shall
37 include an in-home inspection to assess the safety of the home and
38 the ability of the relative or nonrelative extended family member
39 to care for the child's needs, and a consideration of the results of
40 a criminal records check conducted pursuant to subdivision (a) of

1 Section 16504.5 and a check of allegations of prior child abuse or
2 neglect concerning the relative or nonrelative extended family
3 member and other adults in the home. Upon completion of this
4 assessment, the child may be placed in the assessed home. For
5 purposes of this paragraph, and except for the criminal records
6 check conducted pursuant to subdivision (a) of Section 16504.5,
7 the standards used to determine suitability shall be the same
8 standards set forth in the regulations for the licensing of foster
9 family homes.

10 (2) Immediately following the placement of a child in the home
11 of a relative or a nonrelative extended family member, the county
12 welfare department shall evaluate and approve or deny the home
13 for purposes of AFDC-FC eligibility pursuant to Section 11402.
14 The standards used to evaluate and grant or deny approval of the
15 home of the relative and of the home of a nonrelative extended
16 family member, as described in Section 362.7, shall be the same
17 standards set forth in regulations for the licensing of foster family
18 homes which prescribe standards of safety and sanitation for the
19 physical plant and standards for basic personal care, supervision,
20 and services provided by the caregiver.

21 (3) To the extent allowed by federal law, as a condition of
22 receiving funding under Title IV-E of the federal Social Security
23 Act (42 U.S.C. Sec. 670 et seq.), if a relative or nonrelative
24 extended family member meets all other conditions for approval,
25 except for the receipt of the Federal Bureau of Investigation's
26 criminal history information for the relative or nonrelative extended
27 family member, and other adults in the home, as indicated, the
28 county welfare department may approve the home and document
29 that approval, if the relative or nonrelative extended family
30 member, and each adult in the home, has signed and submitted a
31 statement that he or she has never been convicted of a crime in the
32 United States, other than a traffic infraction as defined in paragraph
33 (1) of subdivision (a) of Section 42001 of the Vehicle Code. If,
34 after the approval has been granted, the department determines
35 that the relative or nonrelative extended family member or other
36 adult in the home has a criminal record, the approval may be
37 terminated.

38 (4) If the criminal records check indicates that the person has
39 been convicted of a crime for which the Director of Social Services
40 cannot grant an exemption under Section 1522 of the Health and

1 Safety Code, the child shall not be placed in the home. If the
2 criminal records check indicates that the person has been convicted
3 of a crime for which the Director of Social Services may grant an
4 exemption under Section 1522 of the Health and Safety Code, the
5 child shall not be placed in the home unless a criminal records
6 exemption has been granted by the county based on substantial
7 and convincing evidence to support a reasonable belief that the
8 person with the criminal conviction is of such good character as
9 to justify the placement and not present a risk of harm to the child.

10 SEC. 2. Section 315 of the Welfare and Institutions Code is
11 amended to read:

12 315. (a) If a minor has been taken into custody under this
13 article and not released to a parent or guardian, the juvenile court
14 shall hold a hearing (which shall be referred to as a “detention
15 hearing”) to determine whether the minor shall be further detained.
16 This hearing shall be held as soon as possible, but in any event
17 before the expiration of the next judicial day after a petition to
18 declare the minor a dependent child has been filed. If the hearing
19 is not held within the period prescribed by this section, the minor
20 shall be released from custody.

21 (b) *At the hearing, the court shall inquire regarding the efforts*
22 *made by the social worker to comply with the requirements of*
23 *subdivision (d) of Section 309, and the results of those efforts.*

24 SEC. 3. Section 317 of the Welfare and Institutions Code is
25 amended to read:

26 317. (a) *It is the intent of the Legislature that all parties to*
27 *juvenile court hearings, including children, parents, and social*
28 *workers, have a meaningful opportunity to participate in these*
29 *hearings. At a minimum, it is the intent of the Legislature that all*
30 *parties have the opportunity to review reports and meet with their*
31 *attorneys before the detention hearing, held pursuant to Section*
32 *315, and in advance of all subsequent hearings.*

33 (b) (1) When it appears to the court that a parent or guardian
34 of the child desires counsel but is presently financially unable to
35 afford and cannot for that reason employ counsel, the court may
36 appoint counsel as provided in this section.

37 (2) When it appears to the court that a parent or Indian custodian
38 in an Indian child custody proceeding desires counsel but is
39 presently unable to afford and cannot for that reason employ
40 counsel, the provisions of subsection (b) of Section 1912 of the

1 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section
2 23.13 of Title 25 of the Code of Federal Regulations are applicable.

3 ~~(b)~~

4 (c) When it appears to the court that a parent or guardian of the
5 child is presently financially unable to afford and cannot for that
6 reason employ counsel, and the child has been placed in
7 out-of-home care, or the petitioning agency is recommending that
8 the child be placed in out-of-home care, the court shall appoint
9 counsel for the parent or guardian, unless the court finds that the
10 parent or guardian has made a knowing and intelligent waiver of
11 counsel as provided in this section.

12 ~~(e)~~

13 (d) If a child is not represented by counsel, the court shall
14 appoint counsel for the child unless the court finds that the child
15 would not benefit from the appointment of counsel. The court shall
16 state on the record its reasons for that finding. A primary
17 responsibility of any counsel appointed to represent a child
18 pursuant to this section shall be to advocate for the protection,
19 safety, and physical and emotional well-being of the child. Counsel
20 for the child may be a district attorney, public defender, or other
21 member of the bar, provided that the counsel does not represent
22 another party or county agency whose interests conflict with the
23 child's interests. The fact that the district attorney represents the
24 child in a proceeding pursuant to Section 300 as well as conducts
25 a criminal investigation or files a criminal complaint or information
26 arising from the same or reasonably related set of facts as the
27 proceeding pursuant to Section 300 is not in and of itself a conflict
28 of interest. The court may fix the compensation for the services
29 of appointed counsel. The appointed counsel shall have a caseload
30 and training that ensures adequate representation of the child. The
31 Judicial Council shall promulgate rules of court that establish
32 caseload standards, training requirements, and guidelines for
33 appointed counsel for children and shall adopt rules as required
34 by Section 326.5 no later than July 1, 2001.

35 ~~(d)~~

36 (e) The counsel appointed by the court shall represent the parent,
37 guardian, or child at the detention hearing and at all subsequent
38 proceedings before the juvenile court. Counsel shall continue to
39 represent the parent, guardian, or child unless relieved by the court
40 upon the substitution of other counsel or for cause. The

1 representation shall include representing the parent, guardian, or
2 the child in termination proceedings and in those proceedings
3 relating to the institution or setting aside of a legal guardianship.

4 ~~(e)~~

5 (f) The counsel for the child shall be charged in general with
6 the representation of the child's interests. To that end, the counsel
7 shall make or cause to have made any further investigations that
8 he or she deems in good faith to be reasonably necessary to
9 ascertain the facts, including the interviewing of witnesses, and
10 he or she shall examine and cross-examine witnesses in both the
11 adjudicatory and dispositional hearings. He or she may also
12 introduce and examine his or her own witnesses, make
13 recommendations to the court concerning the child's welfare, and
14 participate further in the proceedings to the degree necessary to
15 adequately represent the child. In any case in which the child is
16 four years of age or older, counsel shall interview the child to
17 determine the child's wishes and to assess the child's well-being,
18 and shall advise the court of the child's wishes. Counsel for the
19 child shall not advocate for the return of the child if, to the best of
20 his or her knowledge, that return conflicts with the protection and
21 safety of the child. In addition counsel shall investigate the interests
22 of the child beyond the scope of the juvenile proceeding and report
23 to the court other interests of the child that may need to be
24 protected by the institution of other administrative or judicial
25 proceedings. The attorney representing a child in a dependency
26 proceeding is not required to assume the responsibilities of a social
27 worker and is not expected to provide nonlegal services to the
28 child. The court shall take whatever appropriate action is necessary
29 to fully protect the interests of the child.

30 ~~(f)~~

31 (g) Either the child or the counsel for the child, with the
32 informed consent of the child if the child is found by the court to
33 be of sufficient age and maturity to so consent, which shall be
34 presumed, subject to rebuttal by clear and convincing evidence, if
35 the child is over 12 years of age, may invoke the
36 psychotherapist-client privilege, physician-patient privilege, and
37 clergyman-penitent privilege; and if the child invokes the privilege,
38 counsel may not waive it, but if counsel invokes the privilege, the
39 child may waive it. Counsel shall be holder of these privileges if
40 the child is found by the court not to be of sufficient age and

maturity to so consent. For the sole purpose of fulfilling his or her obligation to provide legal representation of the child, counsel for a child shall have access to all records with regard to the child maintained by a health care facility, as defined in Section 1545 of the Penal Code, health care providers, as defined in Section 6146 of the Business and Professions Code, a physician and surgeon or other health practitioner, as defined in former Section 11165.8 of the Penal Code, as that section read on January 1, 2000, or a child care custodian, as defined in former Section 11165.7 of the Penal Code, as that section read on January 1, 2000. Notwithstanding any other law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies. All information requested from a child protective agency regarding a child who is in protective custody, or from a child's guardian ad litem, shall be provided to the child's counsel within 30 days of the request.

~~(g)~~

(h) In a county of the third class, if counsel is to be provided to a child at county expense other than by counsel for the agency, the court shall first utilize the services of the public defender prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record.

~~(h)~~

(i) In a county of the third class, if counsel is to be appointed for a parent or guardian at county expense, the court shall first utilize the services of the alternate public defender, prior to appointing private counsel, to provide legal counsel. Nothing in this subdivision shall be construed to require the appointment of the alternate public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the alternate public defender after making a finding of good cause and stating the reasons therefor on the record.

SEC. 4. Section 319 of the Welfare and Institutions Code is amended to read:

1 319. (a) At the initial petition hearing, the court shall examine
2 the child's parents, guardians, or other persons having relevant
3 knowledge and hear the relevant evidence as the child, the child's
4 parents or guardians, the petitioner, or their counsel desires to
5 present. The court may examine the child, as provided in Section
6 350.

7 (b) The social worker shall report to the court on the reasons
8 why the child has been removed from the parent's physical custody,
9 the need, if any, for continued detention, the available services
10 and the referral methods to those services that could facilitate the
11 return of the child to the custody of the child's parents or guardians,
12 and whether there are any relatives who are able and willing to
13 take temporary physical custody of the child. The court shall order
14 the release of the child from custody unless a prima facie showing
15 has been made that the child comes within Section 300, the court
16 finds that continuance in the parent's or guardian's home is
17 contrary to the child's welfare, and any of the following
18 circumstances exist:

19 (1) There is a substantial danger to the physical health of the
20 child or the child is suffering severe emotional damage, and there
21 are no reasonable means by which the child's physical or emotional
22 health may be protected without removing the child from the
23 parent's or guardian's physical custody.

24 (2) There is substantial evidence that a parent, guardian, or
25 custodian of the child is likely to flee the jurisdiction of the court.

26 (3) The child has left a placement in which he or she was placed
27 by the juvenile court.

28 (4) The child indicates an unwillingness to return home, if the
29 child has been physically or sexually abused by a person residing
30 in the home.

31 (c) *The social worker shall report to the court regarding the*
32 *efforts made by the social worker to comply with the requirements*
33 *of subdivision (d) of Section 309, and the results of those efforts.*
34 *The social worker shall also provide to the court any relative*
35 *caregiver information form, as provided for pursuant to Section*
36 *309, that has been completed and received. The court shall*
37 *consider that information and shall determine whether, in the*
38 *court's discretion, to grant the request of a relative to address the*
39 *court.*

40 (e)

1 (d) If the matter is continued pursuant to Section 322 or for any
2 other reason, the court shall find that the continuance of the child
3 in the parent's or guardian's home is contrary to the child's welfare
4 at the initial petition hearing or order the release of the child from
5 custody.

6 ~~(d)~~

7 (e) (1) The court shall also make a determination on the record,
8 referencing the social worker's report or other evidence relied
9 upon, as to whether reasonable efforts were made to prevent or
10 eliminate the need for removal of the child from his or her home,
11 pursuant to subdivision (b) of Section 306, and whether there are
12 available services that would prevent the need for further detention.
13 Services to be considered for purposes of making this determination
14 are case management, counseling, emergency shelter care,
15 emergency in-home caretakers, out-of-home respite care, teaching
16 and demonstrating homemakers, parenting training, transportation,
17 and any other child welfare services authorized by the State
18 Department of Social Services pursuant to Chapter 5 (commencing
19 with Section 16500) of Part 4 of Division 9. The court shall also
20 review whether the social worker has considered whether a referral
21 to public assistance services pursuant to Chapter 2 (commencing
22 with Section 11200) and Chapter 7 (commencing with Section
23 14000) of Part 3, Chapter 1 (commencing with Section 17000) of
24 Part 5, and Chapter 10 (commencing with Section 18900) of Part
25 6 of Division 9 would have eliminated the need to take temporary
26 custody of the child or would prevent the need for further detention.

27 (2) If the child can be returned to the custody of his or her parent
28 or guardian through the provision of those services, the court shall
29 place the child with his or her parent or guardian and order that
30 the services shall be provided. If the child cannot be returned to
31 the physical custody of his or her parent or guardian, the court
32 shall determine if there is a relative who is able and willing to care
33 for the child, and has been assessed pursuant to paragraph (1) of
34 subdivision ~~(d)~~ (e) of Section 309.

35 ~~(e)~~

36 (f) If a court orders a child detained, the court shall state the
37 facts on which the decision is based, specify why the initial removal
38 was necessary, reference the social worker's report or other
39 evidence relied upon to make its determination whether
40 continuance in the home of the parent or legal guardian is contrary

1 to the child's welfare, order temporary placement and care of the
2 child to be vested with the county child welfare department pending
3 the hearing held pursuant to Section 355 or further order of the
4 court, and order services to be provided as soon as possible to
5 reunify the child and his or her family if appropriate.

6 ~~(f)~~

7 (g) (1) If the child is not released from custody, the court may
8 order that the child shall be placed in the assessed home of a
9 relative, in an emergency shelter or other suitable licensed place,
10 in a place exempt from licensure designated by the juvenile court,
11 or in the assessed home of a nonrelative extended family member
12 as defined in Section 362.7 for a period not to exceed 15 judicial
13 days.

14 (2) As used in this section, "relative" means an adult who is
15 related to the child by blood, adoption, or affinity within the fifth
16 degree of kinship, including stepparents, stepsiblings, and all
17 relatives whose status is preceded by the words "great,"
18 "great-great," or "grand," or the spouse of any of these persons,
19 even if the marriage was terminated by death or dissolution.
20 However, only the following relatives shall be given preferential
21 consideration for placement of the child: an adult who is a
22 grandparent, aunt, uncle, or sibling of the child.

23 (3) The court shall consider the recommendations of the social
24 worker based on the assessment pursuant to paragraph (1) of
25 subdivision ~~(d)~~ (e) of Section 309 of the relative's home, including
26 the results of a criminal records check and prior child abuse
27 allegations, if any, prior to ordering that the child be placed with
28 a relative. The court shall order the parent to disclose to the social
29 worker the names, residences, and any known identifying
30 information of any maternal or paternal relatives of the child. The
31 social worker shall initiate the assessment pursuant to Section
32 361.3 of any relative to be considered for continuing placement.

33 ~~(g)~~

34 (h) (1) At the initial hearing upon the petition filed in
35 accordance with subdivision (c) of Rule 5.520 of the California
36 Rules of Court or anytime thereafter up until the time that the
37 minor is adjudged a dependent child of the court or a finding is
38 made dismissing the petition, the court may temporarily limit the
39 right of the parent or guardian to make educational decisions for
40 the child and temporarily appoint a responsible adult to make

1 educational decisions for the child if all of the following conditions
2 are found:

3 (A) The parent or guardian is unavailable, unable, or unwilling
4 to exercise educational rights for the child.

5 (B) The county placing agency has made diligent efforts to
6 locate and secure the participation of the parent or guardian in
7 educational decisionmaking.

8 (C) The child's educational needs cannot be met without the
9 temporary appointment of a responsible adult.

10 (2) If the court cannot identify a responsible adult to make
11 educational decisions for the child and the appointment of a
12 surrogate parent, as defined in subdivision (a) of Section 56050
13 of the Education Code, is not warranted, the court may, with the
14 input of any interested person, make educational decisions for the
15 child. If the court makes educational decisions for the child, the
16 court shall also issue appropriate orders to ensure that every effort
17 is made to identify a responsible adult to make future educational
18 decisions for the child.

19 (3) Any temporary appointment of a responsible adult and
20 temporary limitation on the right of the parent or guardian to make
21 educational decisions for the child shall be specifically addressed
22 in the court order. Any order made under this section shall expire
23 at the conclusion of the hearing held pursuant to Section 361 or
24 upon dismissal of the petition. Upon the entering of disposition
25 orders, any additional needed limitation on the parent's or
26 guardian's educational rights shall be addressed pursuant to Section
27 361.

28 SEC. 5. Section 366.21 of the Welfare and Institutions Code
29 is amended to read:

30 366.21. (a) Every hearing conducted by the juvenile court
31 reviewing the status of a dependent child shall be placed on the
32 appearance calendar. The court shall advise all persons present at
33 the hearing of the date of the future hearing and of their right to
34 be present and represented by counsel.

35 (b) Except as provided in Sections 294 and 295, notice of the
36 hearing shall be provided pursuant to Section 293.

37 (c) At least 10 calendar days prior to the hearing, the social
38 worker shall file a supplemental report with the court regarding
39 the services provided or offered to the parent or legal guardian to
40 enable him or her to assume custody and the efforts made to

1 achieve legal permanence for the child if efforts to reunify fail,
2 including, but not limited to, efforts to maintain relationships
3 between a child who is 10 years of age or older and has been in
4 out-of-home placement for six months or longer and individuals
5 who are important to the child, consistent with the child's best
6 interests; the progress made; and, where relevant, the prognosis
7 for return of the child to the physical custody of his or her parent
8 or legal guardian; and shall make his or her recommendation for
9 disposition. If the child is a member of a sibling group described
10 in subparagraph (C) of paragraph (1) of subdivision (a) of Section
11 361.5, the report and recommendation may also take into account
12 those factors described in subdivision (e) relating to the child's
13 sibling group. If the recommendation is not to return the child to
14 a parent or legal guardian, the report shall specify why the return
15 of the child would be detrimental to the child. The social worker
16 shall provide the parent or legal guardian, counsel for the child,
17 and any court-appointed child advocate with a copy of the report,
18 including his or her recommendation for disposition, at least 10
19 calendar days prior to the hearing. In the case of a child removed
20 from the physical custody of his or her parent or legal guardian,
21 the social worker shall, at least 10 calendar days prior to the
22 hearing, provide a summary of his or her recommendation for
23 disposition to any foster parents, relative caregivers, and certified
24 foster parents who have been approved for adoption by the State
25 Department of Social Services when it is acting as an adoption
26 agency in counties that are not served by a county adoption agency
27 or by a licensed county adoption agency, community care facility,
28 or foster family agency having the physical custody of the child.
29 The social worker shall include a copy of the Judicial Council
30 Caregiver Information Form (JV-290) with the summary of
31 recommendations to the child's foster parents, relative caregivers,
32 or foster parents approved for adoption, in the caregiver's primary
33 language when available, along with information on how to file
34 the form with the court.

35 (d) Prior to any hearing involving a child in the physical custody
36 of a community care facility or a foster family agency that may
37 result in the return of the child to the physical custody of his or
38 her parent or legal guardian, or in adoption or the creation of a
39 legal guardianship, the facility or agency shall file with the court
40 a report, or a Judicial Council Caregiver Information Form

1 (JV-290), containing its recommendation for disposition. Prior to
2 the hearing involving a child in the physical custody of a foster
3 parent, a relative caregiver, or a certified foster parent who has
4 been approved for adoption by the State Department of Social
5 Services when it is acting as an adoption agency or by a licensed
6 adoption agency, the foster parent, relative caregiver, or the
7 certified foster parent who has been approved for adoption by the
8 State Department of Social Services when it is acting as an
9 adoption agency in counties that are not served by a county
10 adoption agency or by a licensed county adoption agency, may
11 file with the court a report containing his or her recommendation
12 for disposition *and may, on and after January 1, 2011, include in*
13 *that report a request to address the court.* The court shall consider
14 the report and recommendation filed pursuant to this subdivision
15 prior to determining any disposition *and shall determine whether,*
16 *in the court's discretion, to grant the request of a foster parent,*
17 *relative caregiver, or the certified foster parent to address the*
18 *court.*

19 (e) *Prior to any hearing pursuant to this section, other than a*
20 *hearing described in subdivision (d), the social worker shall file*
21 *with the court any relative caregiver information form, as provided*
22 *for pursuant to Section 309, that has been completed and received.*
23 *The court shall consider that information and shall determine*
24 *whether, in the court's discretion, to grant the request of a relative*
25 *caregiver to address the court.*

26 ~~(e)~~

27 (f) At the review hearing held six months after the initial
28 dispositional hearing, the court shall order the return of the child
29 to the physical custody of his or her parent or legal guardian unless
30 the court finds, by a preponderance of the evidence, that the return
31 of the child to his or her parent or legal guardian would create a
32 substantial risk of detriment to the safety, protection, or physical
33 or emotional well-being of the child. The social worker shall have
34 the burden of establishing that detriment. At the hearing, the court
35 shall consider the criminal history, obtained pursuant to paragraph
36 (1) of subdivision (f) of Section 16504.5, of the parent or legal
37 guardian subsequent to the child's removal to the extent that the
38 criminal record is substantially related to the welfare of the child
39 or the parent's or guardian's ability to exercise custody and control
40 regarding his or her child, provided the parent or legal guardian

1 agreed to submit fingerprint images to obtain criminal history
2 information as part of the case plan. The failure of the parent or
3 legal guardian to participate regularly and make substantive
4 progress in court-ordered treatment programs shall be prima facie
5 evidence that return would be detrimental. In making its
6 determination, the court shall review and consider the social
7 worker's report and recommendations and the report and
8 recommendations of any child advocate appointed pursuant to
9 Section 356.5; and shall consider the efforts or progress, or both,
10 demonstrated by the parent or legal guardian and the extent to
11 which he or she availed himself or herself to services provided,
12 taking into account the particular barriers to an incarcerated or
13 institutionalized parent or legal guardian's access to those
14 court-mandated services and ability to maintain contact with his
15 or her child.

16 Regardless of whether the child is returned to a parent or legal
17 guardian, the court shall specify the factual basis for its conclusion
18 that the return would be detrimental or would not be detrimental.
19 The court also shall make appropriate findings pursuant to
20 subdivision (a) of Section 366; and, where relevant, shall order
21 any additional services reasonably believed to facilitate the return
22 of the child to the custody of his or her parent or legal guardian.
23 The court shall also inform the parent or legal guardian that if the
24 child cannot be returned home by the 12-month permanency
25 hearing, a proceeding pursuant to Section 366.26 may be instituted.
26 This section does not apply in a case where, pursuant to Section
27 361.5, the court has ordered that reunification services shall not
28 be provided.

29 If the child was under three years of age on the date of the initial
30 removal, or is a member of a sibling group described in
31 subparagraph (C) of paragraph (1) of subdivision (a) of Section
32 361.5, and the court finds by clear and convincing evidence that
33 the parent failed to participate regularly and make substantive
34 progress in a court-ordered treatment plan, the court may schedule
35 a hearing pursuant to Section 366.26 within 120 days. If, however,
36 the court finds there is a substantial probability that the child, who
37 was under three years of age on the date of initial removal or is a
38 member of a sibling group described in subparagraph (C) of
39 paragraph (1) of subdivision (a) of Section 361.5, may be returned
40 to his or her parent or legal guardian within six months or that

1 reasonable services have not been provided, the court shall continue
2 the case to the 12-month permanency hearing.

3 For the purpose of placing and maintaining a sibling group
4 together in a permanent home, the court, in making its
5 determination to schedule a hearing pursuant to Section 366.26
6 for some or all members of a sibling group, as described in
7 subparagraph (C) of paragraph (1) of subdivision (a) of Section
8 361.5, shall review and consider the social worker's report and
9 recommendations. Factors the report shall address, and the court
10 shall consider, may include, but need not be limited to, whether
11 the sibling group was removed from parental care as a group, the
12 closeness and strength of the sibling bond, the ages of the siblings,
13 the appropriateness of maintaining the sibling group together, the
14 detriment to the child if sibling ties are not maintained, the
15 likelihood of finding a permanent home for the sibling group,
16 whether the sibling group is currently placed together in a
17 preadoptive home or has a concurrent plan goal of legal
18 permanency in the same home, the wishes of each child whose
19 age and physical and emotional condition permits a meaningful
20 response, and the best interest of each child in the sibling group.
21 The court shall specify the factual basis for its finding that it is in
22 the best interest of each child to schedule a hearing pursuant to
23 Section 366.26 in 120 days for some or all of the members of the
24 sibling group.

25 If the child was removed initially under subdivision (g) of
26 Section 300 and the court finds by clear and convincing evidence
27 that the whereabouts of the parent are still unknown, or the parent
28 has failed to contact and visit the child, the court may schedule a
29 hearing pursuant to Section 366.26 within 120 days. The court
30 shall take into account any particular barriers to a parent's ability
31 to maintain contact with his or her child due to the parent's
32 incarceration or institutionalization. If the court finds by clear and
33 convincing evidence that the parent has been convicted of a felony
34 indicating parental unfitness, the court may schedule a hearing
35 pursuant to Section 366.26 within 120 days.

36 If the child had been placed under court supervision with a
37 previously noncustodial parent pursuant to Section 361.2, the court
38 shall determine whether supervision is still necessary. The court
39 may terminate supervision and transfer permanent custody to that

1 parent, as provided for by paragraph (1) of subdivision (b) of
2 Section 361.2.

3 In all other cases, the court shall direct that any reunification
4 services previously ordered shall continue to be offered to the
5 parent or legal guardian pursuant to the time periods set forth in
6 subdivision (a) of Section 361.5, provided that the court may
7 modify the terms and conditions of those services.

8 If the child is not returned to his or her parent or legal guardian,
9 the court shall determine whether reasonable services that were
10 designed to aid the parent or legal guardian in overcoming the
11 problems that led to the initial removal and the continued custody
12 of the child have been provided or offered to the parent or legal
13 guardian. The court shall order that those services be initiated,
14 continued, or terminated.

15 ~~(f)~~

16 (g) The permanency hearing shall be held no later than 12
17 months after the date the child entered foster care, as that date is
18 determined pursuant to subdivision (a) of Section 361.5. At the
19 permanency hearing, the court shall determine the permanent plan
20 for the child, which shall include a determination of whether the
21 child will be returned to the child's home and, if so, when, within
22 the time limits of subdivision (a) of Section 361.5. The court shall
23 order the return of the child to the physical custody of his or her
24 parent or legal guardian unless the court finds, by a preponderance
25 of the evidence, that the return of the child to his or her parent or
26 legal guardian would create a substantial risk of detriment to the
27 safety, protection, or physical or emotional well-being of the child.
28 The social worker shall have the burden of establishing that
29 detriment. At the permanency hearing, the court shall consider the
30 criminal history, obtained pursuant to paragraph (1) of subdivision
31 (f) of Section 16504.5, of the parent or legal guardian subsequent
32 to the child's removal to the extent that the criminal record is
33 substantially related to the welfare of the child or the parent or
34 legal guardian's ability to exercise custody and control regarding
35 his or her child, provided that the parent or legal guardian agreed
36 to submit fingerprint images to obtain criminal history information
37 as part of the case plan. The court shall also determine whether
38 reasonable services that were designed to aid the parent or legal
39 guardian to overcome the problems that led to the initial removal
40 and continued custody of the child have been provided or offered

1 to the parent or legal guardian. For each youth 16 years of age and
2 older, the court shall also determine whether services have been
3 made available to assist him or her in making the transition from
4 foster care to independent living. The failure of the parent or legal
5 guardian to participate regularly and make substantive progress in
6 court-ordered treatment programs shall be prima facie evidence
7 that return would be detrimental. In making its determination, the
8 court shall review and consider the social worker's report and
9 recommendations and the report and recommendations of any child
10 advocate appointed pursuant to Section 356.5, shall consider the
11 efforts or progress, or both, demonstrated by the parent or legal
12 guardian and the extent to which he or she availed himself or
13 herself of services provided, taking into account the particular
14 barriers to an incarcerated or institutionalized parent or legal
15 guardian's access to those court-mandated services and ability to
16 maintain contact with his or her child and shall make appropriate
17 findings pursuant to subdivision (a) of Section 366.

18 Regardless of whether the child is returned to his or her parent
19 or legal guardian, the court shall specify the factual basis for its
20 decision. If the child is not returned to a parent or legal guardian,
21 the court shall specify the factual basis for its conclusion that the
22 return would be detrimental. The court also shall make a finding
23 pursuant to subdivision (a) of Section 366. If the child is not
24 returned to his or her parent or legal guardian, the court shall
25 consider, and state for the record, in-state and out-of-state
26 placement options. If the child is placed out of the state, the court
27 shall make a determination whether the out-of-state placement
28 continues to be appropriate and in the best interests of the child.

29 ~~(g)~~

30 (h) If the time period in which the court-ordered services were
31 provided has met or exceeded the time period set forth in
32 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a)
33 of Section 361.5, as appropriate, and a child is not returned to the
34 custody of a parent or legal guardian at the permanency hearing
35 held pursuant to subdivision (f), the court shall do one of the
36 following:

37 (1) Continue the case for up to six months for a permanency
38 review hearing, provided that the hearing shall occur within 18
39 months of the date the child was originally taken from the physical
40 custody of his or her parent or legal guardian. The court shall

1 continue the case only if it finds that there is a substantial
2 probability that the child will be returned to the physical custody
3 of his or her parent or legal guardian and safely maintained in the
4 home within the extended period of time or that reasonable services
5 have not been provided to the parent or legal guardian. For the
6 purposes of this section, in order to find a substantial probability
7 that the child will be returned to the physical custody of his or her
8 parent or legal guardian and safely maintained in the home within
9 the extended period of time, the court shall be required to find all
10 of the following:

11 (A) That the parent or legal guardian has consistently and
12 regularly contacted and visited with the child.

13 (B) That the parent or legal guardian has made significant
14 progress in resolving problems that led to the child's removal from
15 the home.

16 (C) The parent or legal guardian has demonstrated the capacity
17 and ability both to complete the objectives of his or her treatment
18 plan and to provide for the child's safety, protection, physical and
19 emotional well-being, and special needs.

20 For purposes of this subdivision, the court's decision to continue
21 the case based on a finding or substantial probability that the child
22 will be returned to the physical custody of his or her parent or legal
23 guardian is a compelling reason for determining that a hearing
24 held pursuant to Section 366.26 is not in the best interests of the
25 child.

26 The court shall inform the parent or legal guardian that if the
27 child cannot be returned home by the next permanency review
28 hearing, a proceeding pursuant to Section 366.26 may be instituted.
29 The court may not order that a hearing pursuant to Section 366.26
30 be held unless there is clear and convincing evidence that
31 reasonable services have been provided or offered to the parent or
32 legal guardian.

33 (2) Order that a hearing be held within 120 days, pursuant to
34 Section 366.26, but only if the court does not continue the case to
35 the permanency planning review hearing and there is clear and
36 convincing evidence that reasonable services have been provided
37 or offered to the parents or legal guardians.

38 (3) Order that the child remain in long-term foster care, but only
39 if the court finds by clear and convincing evidence, based upon
40 the evidence already presented to it, including a recommendation

1 by the State Department of Social Services when it is acting as an
2 adoption agency in counties that are not served by a county
3 adoption agency or by a licensed county adoption agency, that
4 there is a compelling reason for determining that a hearing held
5 pursuant to Section 366.26 is not in the best interest of the child
6 because the child is not a proper subject for adoption and has no
7 one willing to accept legal guardianship. For purposes of this
8 section, a recommendation by the State Department of Social
9 Services when it is acting as an adoption agency in counties that
10 are not served by a county adoption agency or by a licensed county
11 adoption agency that adoption is not in the best interest of the child
12 shall constitute a compelling reason for the court's determination.
13 That recommendation shall be based on the present circumstances
14 of the child and may not preclude a different recommendation at
15 a later date if the child's circumstances change.

16 If the court orders that a child who is 10 years of age or older
17 remain in long-term foster care, the court shall determine whether
18 the agency has made reasonable efforts to maintain the child's
19 relationships with individuals other than the child's siblings who
20 are important to the child, consistent with the child's best interests,
21 and may make any appropriate order to ensure that those
22 relationships are maintained.

23 If the child is not returned to his or her parent or legal guardian,
24 the court shall consider, and state for the record, in-state and
25 out-of-state options for permanent placement. If the child is placed
26 out of the state, the court shall make a determination whether the
27 out-of-state placement continues to be appropriate and in the best
28 interests of the child.

29 ~~(h)~~

30 (i) In any case in which the court orders that a hearing pursuant
31 to Section 366.26 shall be held, it shall also order the termination
32 of reunification services to the parent or legal guardian. The court
33 shall continue to permit the parent or legal guardian to visit the
34 child pending the hearing unless it finds that visitation would be
35 detrimental to the child. The court shall make any other appropriate
36 orders to enable the child to maintain relationships with individuals,
37 other than the child's siblings, who are important to the child,
38 consistent with the child's best interests.

39 ~~(i)~~

1 (j) (1) Whenever a court orders that a hearing pursuant to
2 Section 366.26 shall be held, it shall direct the agency supervising
3 the child and the licensed county adoption agency, or the State
4 Department of Social Services when it is acting as an adoption
5 agency in counties that are not served by a county adoption agency,
6 to prepare an assessment that shall include:

7 (A) Current search efforts for an absent parent or parents or
8 legal guardians.

9 (B) A review of the amount of and nature of any contact between
10 the child and his or her parents or legal guardians and other
11 members of his or her extended family since the time of placement.
12 Although the extended family of each child shall be reviewed on
13 a case-by-case basis, “extended family” for the purpose of this
14 subparagraph shall include, but not be limited to, the child’s
15 siblings, grandparents, aunts, and uncles.

16 (C) An evaluation of the child’s medical, developmental,
17 scholastic, mental, and emotional status.

18 (D) A preliminary assessment of the eligibility and commitment
19 of any identified prospective adoptive parent or legal guardian,
20 particularly the caretaker, to include a social history including
21 screening for criminal records and prior referrals for child abuse
22 or neglect, the capability to meet the child’s needs, and the
23 understanding of the legal and financial rights and responsibilities
24 of adoption and guardianship. If a proposed guardian is a relative
25 of the minor, and the relative was assessed for foster care placement
26 of the minor prior to January 1, 1998, the assessment shall also
27 consider, but need not be limited to, all of the factors specified in
28 subdivision (a) of Section 361.3.

29 (E) The relationship of the child to any identified prospective
30 adoptive parent or legal guardian, the duration and character of
31 the relationship, the motivation for seeking adoption or
32 guardianship, and a statement from the child concerning placement
33 and the adoption or guardianship, unless the child’s age or physical,
34 emotional, or other condition precludes his or her meaningful
35 response, and if so, a description of the condition.

36 (F) A description of efforts to be made to identify a prospective
37 adoptive parent or legal guardian, including, but not limited to,
38 child-specific recruitment and listing on an adoption exchange
39 within the state or out of the state.

1 (G) An analysis of the likelihood that the child will be adopted
2 if parental rights are terminated.

3 (2) (A) A relative caregiver's preference for legal guardianship
4 over adoption, if it is due to circumstances that do not include an
5 unwillingness to accept legal or financial responsibility for the
6 child, shall not constitute the sole basis for recommending removal
7 of the child from the relative caregiver for purposes of adoptive
8 placement.

9 (B) A relative caregiver shall be given information regarding
10 the permanency options of guardianship and adoption, including
11 the long-term benefits and consequences of each option, prior to
12 establishing legal guardianship or pursuing adoption.

13 ~~(j)~~

14 (k) If, at any hearing held pursuant to Section 366.26, a
15 guardianship is established for the minor with a relative, and
16 juvenile court dependency is subsequently dismissed, the relative
17 shall be eligible for aid under the Kin-GAP Program, as provided
18 for in Article 4.5 (commencing with Section 11360) of Chapter 2
19 of Part 3 of Division 9.

20 ~~(k)~~

21 (l) As used in this section, "relative" means an adult who is
22 related to the minor by blood, adoption, or affinity within the fifth
23 degree of kinship, including stepparents, stepsiblings, and all
24 relatives whose status is preceded by the words "great,"
25 "great-great," or "grand," or the spouse of any of those persons
26 even if the marriage was terminated by death or dissolution.

27 ~~(l)~~

28 (m) For purposes of this section, evidence of any of the
29 following circumstances may not, in and of itself, be deemed a
30 failure to provide or offer reasonable services:

31 (1) The child has been placed with a foster family that is eligible
32 to adopt a child, or has been placed in a preadoptive home.

33 (2) The case plan includes services to make and finalize a
34 permanent placement for the child if efforts to reunify fail.

35 (3) Services to make and finalize a permanent placement for
36 the child, if efforts to reunify fail, are provided concurrently with
37 services to reunify the family.

38 ~~(m)~~

39 (n) The implementation and operation of the amendments to
40 subdivisions (c) and ~~(g)~~ (h) enacted at the 2005–06 Regular Session

1 shall be subject to appropriation through the budget process and
2 by phase, as provided in Section 366.35.

3 SEC. 6. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.